

EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2009-1124 02EE
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For use by Office of Administrative Law (OAL) only

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of CorporationsAGENCY FILE NUMBER (If any)
PRO 05/09**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) California Foreclosure Prevention Act	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2009-0521-05 E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Subchapter 14, Article I, 2031.1, 2031.2, 2031.3, 2031.4, 2031.5, 2031.6, Article II, 2031.7, 2031.8, Article III, 2031.9, Article IV, 2031.10
	REPEAL
TITLE(S) 10	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) November 30, 2009
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

Karen Fong or Tanya Bosch

TELEPHONE NUMBER

(916) 322-3553

FAX NUMBER (Optional)

(916) 322-5875

E-MAIL ADDRESS (Optional)

kfong@corp.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Colleen E. Monahan

DATE

November 24, 2009

TYPED NAME AND TITLE OF SIGNATORY

Colleen E. Monahan, Deputy Commissioner

For use by Office of Administrative Law (OAL) only

THE CALIFORNIA CORPORATIONS COMMISSIONER
HEREBY ADOPTS THE FOLLOWING REGULATIONS
TO CHAPTER 3, TITLE 10, CALIFORNIA CODE OF REGULATIONS
EFFECTIVE:

1. Subchapter 14 is added to Chapter 3, Title 10 of the California Code of Regulations to read:

SUBCHAPTER 14. CALIFORNIA FORECLOSURE PREVENTION ACT

ARTICLE 1. REQUIREMENTS

2. Section 2031.1 is adopted to read:

§ 2031.1. Scope of Regulations.

(a) This subchapter clarifies the application of Civil Code Sections 2923.52 and 2923.53, and sets forth the minimum requirements for a comprehensive loan modification program under Civil Code Section 2923.53, in order for a mortgage loan servicer to obtain an order of exemption from Civil Code Section 2923.52.

(b) The modification of loans in conformance with the Home Affordable Modification Program Guidelines issued by the U.S. Department of the Treasury on March 4, 2009, as amended (the "Guidelines"), and hereby incorporated by reference, shall constitute the implementation of a comprehensive loan modification program that meets the requirements of subdivision (a) of Civil Code Section 2923.53, and shall be deemed to meet all of the requirements in this article (including Sections 2031.2, 2031.3, 2031.4, 2031.5, and 2031.6 of these rules). All other comprehensive loan modification programs shall comply with the minimum standards in this article to obtain an order from the Commissioner for exemption from Civil Code Section 2923.52.

(c) For purposes of this subchapter, "residential mortgage loan" shall mean any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in

Lending Act) or residential real estate upon which is constructed a dwelling (as so defined).

(d) For purposes of this subchapter, "borrower" shall mean a person who was the original obligor on the note or other secured obligation primarily for personal, family or household use and who is the trustor or mortgagor under the security device. "Borrower" includes a person who has formally assumed the secured obligations with the written consent of the beneficiary or mortgagee.

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

3. Section 2031.2 is adopted to read:

§ 2031.2. Eligibility.

(a) For an applicant to obtain an order of exemption from Civil Code Section 2923.52, the comprehensive loan modification program shall, at a minimum, be available for borrowers and residential mortgage loans meeting the following requirements:

1) The residential mortgage loan to be modified was recorded during the period of January 1, 2003 to January 1, 2008.

2) The borrower occupies the property as his or her principal residence, and occupied the property as his or her principal residence at the time the loan became delinquent.

3) The loan is in default, and a notice of default has been filed with the county recorder under Civil Code Section 2924 for the mortgaged property.

4) The residential mortgage loan is the first lien on the property, and either the property is not subject to a subordinate lien, the subordinate lien holder has agreed to subordinate to the modified first lien, or an agreement from the subordinate lien holder is not necessary for the first lien to remain in first position upon the modification of the loan.

5) The mortgaged property is located in California.

6) The borrower can document assets, income or likelihood of future earnings to establish the ability to repay the modified loan, using customary underwriting criteria and analysis or current industry standards.

7) The borrower has not surrendered the property.

8) The borrower has not contracted with an organization, person or entity whose primary business is advising people who have decided to leave their homes regarding how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

9) The borrower does not currently have a bankruptcy action pending under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code.

(b) Nothing in this section prohibits a mortgage loan servicer from including more residential mortgage loans and more borrowers in a comprehensive loan modification program than the minimum set forth in this section, including the borrowers described in paragraphs 8 and 9 of subsection (a) of this rule. For example, the Commissioner will consider a program that includes borrowers whose loans have not yet become delinquent, but such delinquency is reasonably imminent. For purposes of this subchapter, "delinquent" means that the borrower has defaulted on an obligation in the note, deed of trust, mortgage or related loan documents for 30 or more days. "Delinquent" does not include defaults based upon failure to pay at maturity except where maturity has been accelerated and is subject to reinstatement pursuant to Civil Code Section 2924c.

(c) A mortgage loan servicer that has obtained an order from the Commissioner exempting it from Civil Code Section 2923.52(a) is not required to provide a borrower identified in subsection (a) of this rule with an additional 90 days in the foreclosure process.

(d) A comprehensive loan modification program may, but need not, provide for the modification of a loan for a borrower or residential mortgage loan that does not meet the eligibility requirements in subsection (a) of this rule.

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

4. Section 2031.3 is adopted to read:

§ 2031.3. Availability.

(a) For an applicant to obtain an order of exemption from Civil Code Section 2923.52, the comprehensive loan modification program shall, at a minimum, be made available to any borrower meeting the eligibility requirements of Section 2031.2 of these rules who calls, writes, or otherwise communicates with the mortgage loan servicer to notify the servicer of a financial hardship or to explore modifications to an existing loan, and shall be made available to borrowers as part of the contact required under Civil Code Section 2923.5.

(b) Every servicer that contacts a borrower in writing under Civil Code Section 2923.5 shall notify the borrower of the availability of the servicer's comprehensive loan modification program.

(c) A servicer is not required to comply with this section if the loan is investor-owned and the pooling and servicing agreement or other contract prohibits the servicer from modifying the loan terms in the manner set forth in this subchapter.

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

5. Section 2031.4 is adopted to read:

§ 2031.4. Program Requirements.

For an applicant to obtain an order of exemption from Civil Code Section 2923.52, the comprehensive loan modification program shall meet the minimum requirements in Sections 2031.5 and 2031.6 of these rules.

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

6. Section 2031.5 is adopted to read:

§ 2031.5. Loan Modification Features.

(a) Any residential mortgage loan refinanced under the HOPE for Homeowners Program of the HOPE for Homeowners Act of 2008 (Title IV of Division A of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008) as amended, and the rules adopted thereunder) is conclusively presumed to meet the minimum requirements for a loan modification under a comprehensive loan modification program.

(b) Any residential mortgage loan refinanced under the Home Affordable Refinance Program announced by the U.S. Department of the Treasury on February 18, 2009, is conclusively presumed to meet the minimum requirements for a loan modification under a comprehensive loan modification program.

(c) Anticipated Recovery (NPV) Test

(1) For purposes of determining the anticipated recovery from foreclosure and the anticipated recovery from a loan modification, the net present value of the anticipated recovery shall be based on reasonable assumptions regarding discount rates, property values, costs of foreclosure, costs of modification, and ability of borrowers to pay. A servicer shall have internal or external evidence to support the validity of the assumptions in the calculations. The use of the Net Present Value Model Parameters in the Home Affordable Modification Program Guidelines, including applicable discount rates, cure rates and redefault rates, issued by the Department of the Treasury on March 4, 2009, and any amendments thereto, shall meet the requirements of this section and shall not require additional evidence or support. If a servicer's anticipated recovery (NPV) model differs from the Treasury's Net Present Value Model Parameters, a servicer shall explain the differences in the application and set forth a justification for the differences.

(2) Where the net present value of the anticipated recovery from a loan modification meeting

the parameters of this section exceeds the net present value of the anticipated recovery from foreclosure, the servicer shall provide a loan modification to eligible borrowers unless:

(A) A borrower is unable to document his or her ability to repay the loan; or

(B) After reducing the interest rate, extending the amortization period, forbearing principal, or modifying the loan in another manner reasonably designed to facilitate repayment of the loan, the servicer is unable to achieve a loan modification for the borrower that results in a borrower's ability to repay the loan, under customary underwriting criteria and analysis or current industry standards.

(d) Debt to Income Ratio of 38% or Less

(1) For purposes of applying the anticipated recovery test, a servicer shall target a 38% housing-related debt to gross income ratio. However, a servicer is not required to meet this ratio for every loan modified under the program. A servicer's loan modifications shall, on an aggregate basis, target a 38% housing-related debt to gross income ratio. A servicer may use any reasonable statistical analysis of loan modifications to establish that its loan modification program targets a 38% housing-related debt to gross income ratio on an aggregate basis, and may, but is not required to, include loan modifications beyond those meeting the minimum eligibility requirements under this subchapter.

(2) For loan modification programs that do not achieve a 38% or lower ratio, on an aggregate basis, a servicer shall be able to establish other borrower characteristics that support a borrower's ability to repay the loan. These characteristics may include, but are not limited to, assets, a high income, low consumer debt, or any other borrower characteristics that support a borrower's ability to repay the loan, using customary underwriting criteria or current industry standards. If a servicer's comprehensive loan modification program does not achieve a debt-to-income ratio of 38% or lower, on an aggregate basis, the servicer shall explain in the application the reason for the higher ratio.

(3) For purposes of calculating housing-related debt to gross income, housing-related debt

does not include junior liens.

(e) Other Features

(1) A comprehensive loan modification program shall include at least two of the following features:

(A) An interest rate reduction, as needed, for a fixed term of at least 5 years.

(B) An extension of amortization period for the loan term, to no more than 40 years from the original date of the loan.

(C) Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan.

(D) Reduction of principal.

(E) Compliance with a federally mandated loan modification program.

(F) Any other factor the Commissioner determines is appropriate, as identified and described in the servicer's application and approved by the Commissioner. Some factors may include, but are not limited to, back-end debt-to-income ratios, elimination of certain delinquency-related charges, modifications for borrowers who are not delinquent, but where such delinquency is reasonably imminent, and other forms of modification that result in a reduction of monthly payments for borrowers.

(2) While a comprehensive loan modification program must include at least two of the features set forth in paragraph (1), each individual loan modification need not include two features.

(3) A servicer shall have criteria in place that define when a borrower qualifies for the potential concessions or modifications.

(f) Long-term Sustainability:

A loan modification shall be presumed to constitute a long-term sustainable modification if it includes at least one of the following characteristics:

(1) The modification provides a reduction in monthly payment for the borrower for at least 5 years;

(2) The modification provides the borrower with a housing-related debt to gross income ratio of 38% or less;

(3) After the modification, the borrower's back-end debt-to-income ratio (as defined in the Home Affordable Modification Program Guidelines issued by the Department of the Treasury on March 4, 2009) is equal to or less than 55%;

(4) The borrower is current under the terms of the modified loan at the end of a 3-month trial period; or

(5) The modification is pursuant to the Home Affordable Modification Program Guidelines, HOPE for Homeowners Program, or another federal program intended to reduce the rate of foreclosures.

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

7. Section 2031.6 is adopted to read:

§ 2031.6. Other Requirements for Comprehensive Loan Modification Programs.

(a) If a loan modification consists solely of a repayment plan, a servicer must be able to validate that the borrower has a housing-related debt to gross income ratio of 38% or less, and that under customary underwriting analysis and criteria or current industry standards the servicer has reasonable grounds to support the ability of the borrower to repay the loan. For purposes of this subsection, a repayment plan means a plan or arrangement where loan amounts past due, including principal, interest, late fees or other penalties, are added to the principal amount due on a loan and re-aged so that the loan is no longer delinquent, and no other loan concessions as described in Civil Code Section 2923.53(a) are provided to a borrower.

(b) A servicer shall consider all eligible loans under this subchapter unless prohibited by the rules of the applicable pooling and servicing agreement or other investor servicing agreements.

(c) A servicer shall use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties, including but not limited to junior lien holders and investors.

(d) For any request to modify a loan made by a borrower and received by the mortgage loan servicer prior to the expiration of 3 months following the recording of a notice of default, a servicer shall act on the request within a reasonable time period, and shall have procedures and processes in place to ensure that delays in the process not caused by a borrower do not adversely impact a borrower in the modification or foreclosure process. For purposes of this subsection, a mortgage loan servicer that evaluates a loan modification request in accordance with the time periods recommended in the HOPE NOW Mortgage Servicing Guidelines dated June 9, 2008, and hereby incorporated by reference, shall be deemed to be acting on a loan modification request in a reasonable time. Every mortgage loan servicer shall have a process in place to provide a borrower an acknowledgement of the receipt of a loan modification request. Nothing herein is intended to prevent a mortgage loan servicer from accepting and processing a borrower loan modification request received after three months from the date the notice of default is recorded.

(e) If a borrower fails to participate in the modification process by providing documentation within a reasonable time or otherwise abandoning the borrower's loan modification request, a servicer may decline the request and pursue other remedies such as foreclosure sale. For purposes of this subsection, a borrower that provides documentation within 2 weeks of a request by a servicer shall be presumed to have provided documentation within a reasonable time. A servicer shall notify a borrower in writing of the time period to respond to a request for information and the potential consequence of failing to provide information in a reasonable time, prior to declining a loan modification request because of a borrower's undue delay.

(f) A comprehensive loan modification program may include other foreclosure alternatives for borrowers who do not qualify for a loan modification or who no longer wish to remain in the property, such as short sales or deeds-in-lieu of foreclosure.

(g) A servicer is not required to modify a loan more than once, regardless of whether the modification was entered into prior to the operative date of the California Foreclosure Prevention Act (Civil Code Section 2923.52 et seq.) or thereafter pursuant to a comprehensive loan modification program approved by the Commissioner, provided that the initial modification reduced the borrower's monthly payments.

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

8. Section 2031.7 is adopted to read:

ARTICLE II. APPLICATION

§ 2031.7. INITIAL APPLICATION.

An applicant shall be temporarily exempt from subdivision (a) of Civil Code Section 2923.52 upon the filing of the exemption application set forth in this rule, provided that the application is accepted by the Commissioner.

1. Where to File

(a) Applicants licensed by the Department of Corporations under either the California Finance Lenders Law or the California Residential Mortgage Lending Act, and any other entities servicing residential mortgage loans that are not described in subparagraphs (b) and (c), shall file their application with the Department of Corporations at the following address:

Foreclosure Exemptions - Department of Corporations

320 West 4th Street, Suite 750

Los Angeles, CA 90013-2344

Applications not filed by mail may be delivered to any of the Department of Corporations' locations.

Alternatively, applications may be submitted to the Department of Corporations through any electronic means that may be made available by the department at its Internet website (www.corp.ca.gov).

(b) Commercial or industrial banks, savings associations, or credit unions organized in this state shall file their application with the Department of Financial Institutions at the following address (for purposes of this regulation, the phrase "organized in this state" means institutions headquartered in this state):

Foreclosure Exemptions - Department of Financial Institutions

1810 - 13th Street

Sacramento, California 95811-7118

Applications may be submitted by electronic mail to foreclosures@dfi.ca.gov.

(c) Applicants licensed by the Department of Real Estate under the Real Estate Law shall file their application with the Department of Real Estate at the following address:

Foreclosure Exemptions - Department of Real Estate

P.O. Box 187007

Sacramento, CA 95818-7007

Applications may be submitted by electronic mail to foreclosures@dre.ca.gov.

The inadvertent filing of an application with the incorrect department will not constitute grounds for denial of the application.

2. When to File

An applicant may file an application at any time. An applicant will be temporarily exempt from subdivision (a) of Civil Code Section 2923.52 upon the receipt of the exemption application by the

appropriate Department as noted above. An application received before the operative date of Civil Code Section 2923.52 shall be deemed received upon the operative date of that section, for purposes of the temporary order under subdivision (b)(2) of Civil Code Section 2923.53.

3. Temporary Order

Upon the latter of the date of receipt of an application or the operative date of Civil Code Section 2923.52, the Department will immediately notify a servicer electronically of the issuance of a Temporary Order exempting the servicer from the requirements of subdivision (a) of Civil Code Section 2923.52. The Department will identify the servicer as having a Temporary Order on the Department's website, and mail a Temporary Order to the servicer.

4. Final Order

Within 30 days of the latter of the date of receipt of an application or the operative date of Civil Code Section 2923.52, the Department will notify the servicer of whether the servicer has a comprehensive loan modification program that meets the requirements of Civil Code Section 2923.53. Upon a finding that the loan modification program meets the requirements of that section, the Commissioner shall issue a Final Order, and shall immediately notify the servicer of the final order.

5. Denial of Application

If the Commissioner denies the exemption application, the Department shall immediately notify the servicer. The Temporary Order shall remain in effect for 30 days after the date of denial. A servicer may submit a revised application before or after the denial of an application. A revised application will not alter or delay the expiration of the Temporary Order. Upon the expiration of the Temporary Order, a servicer shall comply with subdivision (a) of Civil Code Section 2923.52.

6. Changes to Application

The Department will accept changes to an application while the application is under

consideration. However, the Temporary Order may not be extended.

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

9. Section 2031.8 is adopted to read:

§ 2031.8. Changes to Program after Final Order.

(a) A servicer may not alter its comprehensive loan modification program after the servicer receives a Final Order from the Commissioner, unless the servicer informs the Commissioner of the change to be made to the program. Any alterations to the program that cause the program to fall out of compliance with the approved program shall require a new application for exemption from the Commissioner. Nothing herein shall prevent a servicer from adding additional features to the modification program where such features are designed to increase the eligible volume of loans to be modified, reduce the amounts of monthly payments to borrowers, or reduce the probability of redefault, provided that the Commissioner receives timely notice of such alteration. Such timely notice shall not be greater than sixty (60) days after the changes to the modification program are proposed or initiated.

(b) A change made by the federal government, or an agent thereof, to a federal program, including but not limited to the Home Affordable Modification Program, the Home Affordable Refinance Program, or the Hope for Homeowners Program, shall not constitute a change to a comprehensive loan modification program and shall not require a new application nor require notice to the Commissioner.

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

10. Section 2031.9 is adopted to read:

ARTICLE III. APPLICATION FORM

§2031.9. The exemption application shall be in the following form:

STATE OF CALIFORNIA
DEPARTMENTS OF
CORPORATIONS, FINANCIAL INSTITUTIONS,
AND REAL ESTATE

APPLICATION FOR ORDER OF EXEMPTION FROM
CIVIL CODE SECTION 2923.52(a)
CALIFORNIA FORECLOSURE PREVENTION ACT

The purpose of this application is to apply for an order of exemption from Section 2923.52 of the California Foreclosure Prevention Act (California Civil Code Section 2923.52 et seq.). The approval of this application by the Commissioner shall provide the applicant with an exemption from the additional 90-day delay period before a servicer may file the Notice of Sale when foreclosing on real property, as provided in Civil Code Section 2923.52.

Upon filing this application, the applicant will be issued a temporary order of exemption, effective from the latter of the date of receipt of the application or the operative date of Civil Code Section 2923.52. The temporary order of exemption remains in effect until a final order of exemption is issued or for thirty (30) days after the application is denied.

When completing the application, please note the following:

- The name of the applicant must be the applicant's legal name.

- The applicant's regulatory license number must be provided.
- If the applicant holds a license with more than one regulatory agency under the same legal name for the same entity, list the license numbers for each regulatory agency from which an order of exemption is requested.
- The applicant must provide the name, title, address, email address, and telephone number of the contact person to whom questions regarding the filing of this application should be directed.
- The application must be signed by the applicant if a sole proprietor, by a general partner if a partnership, or by an authorized officer if a corporation or other entity.

The applicant's loan modification program must meet the following requirements:

- The program is designed to keep borrowers in their homes when the anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.
- The program targets a ratio of the borrower's housing related debt to gross income of 38% or less, on an aggregate basis in the program.
- The program includes a combination of the following:
 1. An interest rate reduction, as needed, for at least five years.
 2. An extension of the amortization period for the loan term, to no more than forty years from the original date of the loan.
 3. A deferral of some portion of the unpaid principal balance until the maturity of the loan.
 4. A reduction of principal.
 5. Compliance with a federally mandated loan modification program.

6. Any other factor the Commissioner determines is appropriate, as identified and described in this application and approved by the Commissioner (see 10 CCR § 2031.5(e)(1)(F)).

- In determining a loan modification solution for the borrower, the program seeks to achieve long-term sustainability for the borrower.

The appropriate page and paragraph from the loan modification program must be referenced on the application to show the program's compliance with the above requirements and expectations.

NOTE: A servicer is not required to violate a contractual agreement for the investor-owned loans or provide a modification to a borrower who is not willing or able to pay under the modification.

In addition to other required documentation, an applicant must submit with this application the declaration that meets the disclosure requirements of Civil Code Section 2923.54 that the applicant will include, or instruct the trustee to include, in the Notice of Sale. The declarations submitted with the application must state whether the servicer has obtained an order of exemption from the Commissioner that is current and valid on the date the Notice of Sale is recorded, and whether the additional 90-day period is applicable.

The application shall be filed with the appropriate agencies as follows:

Department of Corporations

- Licensed residential mortgage lenders and servicers
- Licensed finance lenders and brokers servicing mortgage loans

- Any other entities servicing mortgage loans that are not required to file the application with the Department of Financial Institutions or the Department of Real Estate

Department of Financial Institutions

- Commercial and industrial banks
- Savings associations
- Credit unions

Organized in this state servicing mortgage loans (for purposes of this regulation, the phrase "organized in this state" means institutions headquartered in this state)

Department of Real Estate

- Licensed real estate brokers servicing mortgage loans

An application will not be rejected by a department based upon an applicant's inadvertent failure to file with the designated department.

APPLICATION FOR ORDER OF EXEMPTION UNDER

SECTION 2923.53 OF THE

CALIFORNIA FORECLOSURE PREVENTION ACT

(CIVIL CODE SECTION 2923.52 ET SEQ.)

1. Legal name of applicant:

Fictitious business name (FBN):

2. License numbers:

DOC Primary License Number: _____

DFI Primary License Number: _____

DRE Primary License Number: _____

Other entity servicing mortgage loans

Name of Primary Regulator: _____

License/Identification Number, if applicable: _____

(Specify every license held by applicant that this application applies to.)

☐ Check this box if an application has also been filed with another department.

3. Contact Person/Title: _____

4. Telephone Number: _____

5. Email Address: _____

(Confirmation of Temporary Order will be provided to this e-mail address.)

6. Mailing Address: _____

7. Date comprehensive loan modification program was implemented: _____

8. Link to applicant's website describing its loan modification program:

9. Are you a commercial or industrial bank, savings association or credit union that has adopted a comprehensive loan modification program in substantial conformance with the Home Affordable Modification Program Guidelines issued by the Department of Treasury on March 4, 2009?

Yes _____ No _____

Indicate any differences from the Home Affordable Modification Program: _____

If your answer is "Yes," please skip the remaining questions, provide only Exhibit 2, and complete the declaration section of this application. If your answer is "No," please continue to complete the remainder of this application.

10. Are you currently participating in a federally sponsored loan modification program, or other federal loan modification program?

Yes _____ No _____

If yes, please indicate the program below:

_____ Home Affordable Modification Program

_____ Home Affordable Refinance Program

Hope for Homeowners

Other. Please specify.

A. Have you entered into a contract or agreement with the federal agency responsible for the program?

Yes No

If your answer is "yes," please provide a copy of the agreement(s). If you have entered into a Servicer Participation Agreement with a financial agent of the United States for the Home Affordable Modification Program, skip the remaining questions, provide only Exhibit 2, and complete the declaration section of this application.

B. Does the federal loan modification program(s) you are participating in cover all types of residential mortgage loans you service? (i.e. Fannie Mae, Freddie Mac, FHA, VA, etc.)

Yes No

If no, please explain and include how modifications for the loans not covered by the federal program are performed.

The following exhibits must be submitted with this application:

Exhibit (1): A description of your Comprehensive Loan Modification Program(s). The program must

at a minimum, include the requirements of Civil Code Section 2923.53. Please respond to the following questions and reference below the page and/or paragraph numbers with your submitted program. If you have more than one comprehensive loan modification program, please identify the program name and provide the requested information for each program:

Program 1 Name/Identity: _____

Program 2 Name/Identity: _____

Program 3 Name/Identity: _____

- Does the program contain a provision that the anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis? (Net present value (NPV) has same meaning as used in the federal Affordable Home Modification Program.)

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

- Does the program contain a provision that it targets a ratio of the borrower's housing related debt to gross income of 38% or less, on an aggregate basis in the program?

Program 1

Yes_____No_____

If yes, indicate the location of the provision. Page_____Paragraph_____

Program 2

Yes_____No_____

If yes, indicate the location of the provision. Page_____Paragraph_____

Program 3

Yes_____No_____

If yes, indicate the location of the provision. Page_____Paragraph_____

- The program includes the consideration of a combination of the following features:

A. Does the program include an interest rate reduction, as needed, for at least five years?

Program 1

Yes_____No_____

If yes, indicate the location of the provision. Page_____Paragraph_____

Program 2

Yes_____No_____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 3

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

B. Does the program include an extension of the amortization period for the loan term, to no more than forty years from the original date of the loan?

Program 1

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 2

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 3

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

C. Does the program include a deferral of some portion of the unpaid principal balance until the maturity of the loan?

Program 1

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 2

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 3

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

D. Does the program include a reduction of principal?

Program 1

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 2

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 3

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

E. Does the program provide for loan modifications that comply with any federal loan

modification program?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

F. Does the program include other factors that have resulted in an increased number of loan modifications? Please provide a description and an explanation of how the other factors have reduced foreclosures on Exhibit 5.

- In determining a loan modification solution for the borrower, does the servicer seek to reduce monthly payments for at least 5 years?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Exhibit (2): A NOTICE OF SALE form in compliance with Civil Code Section 2923.54, or a copy of the declaration, or forms of declarations, in compliance with Civil Code Section 2923.54 that the applicant will instruct its trustee to include in its Notice of Sale.

Exhibit (3). A copy of the notice that will be sent to borrowers informing them of the program.

Exhibit (4): Complete and submit the most recent 3 months of available data on the attached spreadsheet for mortgages secured by residential property located in California, which includes the following statistical information:

Servicing portfolio volume, including number of units and unpaid principal balance

Delinquency status of portfolio

Loss mitigation data including total number of modifications made

Loan modification features used

Housing related debt ratios (if available)

Subsequent defaults on loan modifications

Reasons for denial of loan modifications

Exhibit (5): Explanations for items included in the application.

(a) Provide the differences between applicant's NPV model and the Department of the Treasury's Net Present Value Model Parameters, and justification for the differences. For example, the use of alternative discount rates, the use of short sale rather than foreclosure, and other differences.

(b) If the program is unable to achieve a debt-to-income ratio of 38% or less, on an aggregate basis, provide an explanation of why the program is unable to achieve this target.

(c) Provide a description of other modification features to be considered by the Commissioner, if any.

NOTE: Exhibits 1, 4 and 5 are considered Confidential in nature and therefore will not be made available for public inspection on an individual basis.

Wherefore, applicant hereby requests that the Commissioner grant an order of exemption from Civil Code Section 2923.52, as provided in Section 2923.53 of the California Foreclosure Prevention Act (Civil Code Section 2923.52 et seq.) pursuant to the criteria set forth in that act and the rules adopted thereunder.

I declare under penalty of perjury that I have read the forgoing application, including all exhibits attached thereto, or filed therewith, and know the contents thereof, and that the statements are true and correct. I further declare that the applicant has implemented the comprehensive loan modification program set forth in this application, and that I have authority to make these representations on behalf of the applicant.

Applicant

Signature of Declarant

Typed Name and Title of Declarant

Executed at: _____

(City, County, and State)

Date: _____

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference:
Sections 2923.52 and 2923.53, Civil Code.

11. Section 2031.10 is adopted to read:

ARTICLE IV. DATA COLLECTION

§ Section 2031.10. Reports.

(a) A servicer that obtains a Final Order exempting the servicer from the provisions of subdivision (a) of Civil Code Section 2923.52 shall, upon request of the Commissioner, report loan modification data to the Commissioner on a quarterly basis, with the first report due no later than 90 days after a mortgage loan servicer obtains a final order from the Commissioner.

(b) The loan modification data shall be reported on the FORECLOSURE PREVENTION LOAN MODIFICATION DATA report form, hereby incorporated by reference.

(See Excel Document)

(c) A mortgage loan servicer may seek a waiver from all or part of the reporting requirement of this section by requesting a hardship exemption from the Commissioner. A hardship exemption may be granted if a mortgage loan servicer is able to establish one or more of the following:

1. The servicer's volume of loans that are eligible for a comprehensive loan modification program will not be of any reasonable statistical value to the evaluation of the effectiveness of the California Foreclosure Prevention Act.
2. The servicer's infrastructure prevents it from collecting the data requested by the Commissioner, or the necessary changes are cost prohibitive. In granting a hardship exemption under this paragraph, the Commissioner may require a servicer to collect and report on information in the format that the servicer maintains the information or such other format agreed upon between the servicer and the Commissioner.

(d) The Commissioner may accept a report required or requested under, or pursuant to, a federal loan modification program, in lieu of the report in subsection (b).

NOTE: Authority cited: Sections 2923.52(c)(2)(D) and 2923.53(d), Civil Code. Reference:

Sections 2923.52 and 2923.53, Civil Code.

Preparer's Email:
Servicer Name:

[illegible][illegible]

Delinquency/Status of Portfolio (Quarter End)	Total	Total	Total	Total	Total
30 to < 60 Days Delinquent Accounts (# Units)					
60 to < 90 Days Delinquent Accounts (# Units)					
90 to < 120 Days Delinquent Accounts (# Units)					
120 + Days Delinquent Accounts (# Units)					
Loans in foreclosure @ quarter end (# Units)					
Loans referred to foreclosure this period (# Units)					

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CONFIDENTIAL

Preparer's Email: [REDACTED]
 Servicer License Number: [REDACTED]
 CFPB Application Number: [REDACTED]
 Last Quarter Reported: 9/30/2009

Quarter Ending 9/30/2009 Quarter Ending 12/31/2009 Quarter Ending 3/31/2010 Quarter Ending 6/30/2010 Quarter Ending 9/30/2010 Quarter Ending 12/31/2010

Loan Modification Features		Total	Total	Total	Total	Total	Total
12	Interest Rate Reduction 5 Years or Greater						
13	Extension of Terms No More Than 40 Years						
14	Deferral of Principal Until Maturity						
15	Reduction of Principal						
16	Monthly Payment Less Than Payment Prior to Modification						
17	Other Features						
18							

Housing Related Debt Ratios		38% or Less	Over 38%	38% or Less	Over 38%	38% or Less	Over 38%	38% or Less	Over 38%	38% or Less	Over 38%
19	Loans Prior to Modifications										
	Loans After Modifications										
	Workouts Not Resulting in Modifications										

Subsequent Defaults on Loan Modifications		Total	Total	Total	Total	Total	Total
	During Trial Period						
	Within 6 Months of Modifications						
	Within 12 Months of Modification						
	Within 18 Months of Modification						

Reasons for Declining Modifications		Total	Total	Total	Total	Total	Total
	Total Modifications Declined	0	0	0	0	0	0
	Borrower or loan did not meet eligibility requirements						
	Unable to document hardship						
	Subordinate lien holder unwilling to subordinate to modified loan						
	Not Affordable (Unable to Pay)						
	Anticipated recovery from foreclosure exceeds that from modification						
	Pooling Servicing Agreement or other contract prevented modification						
	Other						

CONFIDENTIAL

Preparer's Email:

Service License Number:

CFPA Application Number:

Last Quarter Reported 9/30/2009

Additional Comments:

Quarter Ending 9/30/2009

Quarter Ending 12/31/2009

Quarter Ending 3/31/2010

Quarter Ending 6/30/2010

Quarter Ending 9/30/2010

Quarter Ending 12/31/2010

Definitions

-UPB (\$MM) - Unpaid principal balance in millions.

Units - Actual number of loans, not rounded.

1. Please state the average number of workout case files handled by a Loss Mitigation processor or counselor.

2. Sum of Accounts Paid Current, Deeds-in-lieu, Short Sales, Paid-in-Fulls, Modifications, Forbearance Plans, and other Loss Mitigation resolutions initiated per quarter.

3. Sum of Accounts Paid Current, Deeds-in-lieu, Short Sales, Paid-in-Fulls, Modifications, Forbearance Plans, and other Loss Mitigation resolutions completed per quarter.

4. Account brought contractually current.

5. Deed-in-lieu of Foreclosure is defined as the voluntary conveyance of the property from the borrower to the lender in return for the forgiveness of the debt, ultimately placing the lender/servicer in possession of the property.

6. Short Sale (Short Payoff) is defined as the situation in which the lender agrees to accept an amount that is less than the total indebtedness due in full satisfaction of the borrower's mortgage debt.

7. Paid in Full is defined as the outstanding indebtedness being completely satisfied and the mortgage subsequently discharged.

8. A loan Modification is defined as a written agreement between the borrower and the lender to alter one or more of the terms of the original agreement. A modification may consist of a reduction of the interest rate, capitalization of delinquent payments, extension of the duration of the note, conversion of the repayment terms from ARM to Fixed (or vice versa).

8a. Trial loan modifications initiated under the Home Affordable Modification Program (HAMP).

8b. Trial loan modifications initiated under a program not related to HAMP.

8c. Permanent loan modifications initiated under HAMP.

9. Repayment Plan/Forbearance Plan. Forbearance is defined as a temporary reduction or suspension of the payments. Repayment Plan is defined as an agreement that gives you a fixed amount of time to repay the amount you are behind by combining a portion of what is past due with your regular monthly payment.

10. Other includes Note Sales and any alternative loss mitigation methodologies that a servicer may employ to minimize loss severity.

11. Loans that went to foreclosure sale and/or into REO inventory.

12. Include modifications in all categories that apply. For example, if a modification includes an "Extension of Terms" and a "Reduction of Principal", include it in both categories.

13. An interest rate reduction, as needed, for a fixed term of at least five years.

14. An extension of the amortization period for the loan term, to no more than 40 years from the original date of the loan.

15. Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan.

16. Reduction of Principal

17. Loans where the monthly payment after the modification was less than the monthly payment prior to the modification.

18. Other features that have resulted in the reduction of foreclosures. Please include in the Additional Comments section a description of the feature used and explain how it has resulted in reduced foreclosures.

19. Loans prior to modification, loans after modification, and workouts not resulting in modifications must be segregated between those with a housing debt ratio of 35% or less and those over 35%.

20. The reasons are non-exclusive and more than one reason may be provided for each denial of a modification request.